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CITY OF HUNTINGTON BEACH

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To Government Code Section 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CITY OF HUNTINGTON BEACH, a California
Charter City,

Petitioner,

vs.

THE STATE OF CALIFORNIA; GAVIN
NEWSOM, Governor of California, in his Official
Capacity; XAVIER BECERRA, Attorney General
of California, in his Official Capacity, and, DOES
1 through 20,

Respondents.

CASE NO. 30-2019-01044945-CU-WM-CJC

Judge Linda Marks

**PETITION FOR WRIT OF
MANDAMUS (C.C.P. §1085)**

This Petition for Writ of Mandamus is brought by Petitioner, the City of Huntington Beach
("City").

This Petition is directed to and against Respondents, State of California ("State"), Gavin
Newsom, in his official capacity as Governor of the State of California ("Governor"), and Xavier
Becerra, Attorney General of California, in his official capacity as the Attorney General of the
State of California ("Attorney General").

1 The City alleges as follows:

2 **I. PARTIES**

3 1. Petitioner, CITY OF HUNTINGTON BEACH ("City"), is and at all relevant times
4 has been a Charter City organized and existing under a freeholder's charter and exercising local
5 control and authority over its Municipal Affairs, including without limitation the provision of local
6 zoning laws as authorized by Title 7 of the California Government Code as well as Article XI, § 5
7 of the California Constitution.

8 2. Respondent, STATE OF CALIFORNIA ("State"), is and at all relevant times has
9 been a sovereign State.

10 3. Respondent, GAVIN NEWSOM ("Governor"), is and at all relevant times has been
11 the Governor of the State of California. He is being sued in his official capacity as Governor of
12 the State of California.

13 4. Respondent, XAVIER BECERRA ("Attorney General"), is and at all relevant
14 times was the Attorney General of the State of California. He is being sued in his official capacity
15 as Attorney General of the State of California.

16 5. Unless noted otherwise, the City hereinafter refers to the State, Governor and
17 Attorney General collectively as "Respondents."

18 6. The City does not know of the true names and capacities of those Respondents sued
19 herein as DOES 1 through 20, inclusive, and therefore sues those Respondents by such fictitious
20 names. The City will amend this Petition to allege the true names and capacities of these
21 fictitiously named Respondents when the same have been ascertained.

22 **II. JURISDICTION AND VENUE**

23 7. Jurisdiction and venue lie in the Superior Court of the County of Orange pursuant
24 to Code of Civil Procedure § 1085.

25 **III. INTRODUCTION**

26 8. Senate Bill ("SB") 35 went into effect January 1, 2018 and amended California
27 Government Code §§ 65400, 65582.1 and 65913.4. The Bill was part of a "housing package" that
28 was touted as legislation addressing the State's alleged housing shortage and high housing cost.

1 The California Legislature declared that SB 35 applies to all cities and counties, including Charter
2 Cities.

3 9. Through this Petition, the City seeks to invalidate the unconstitutional mandates of
4 SB 35 that impermissibly strip the City's constitutionally protected Charter authority with respect
5 to local zoning "Municipal Affairs." Authority over local land use and zoning of Charter Cities is
6 constitutionally vested in Charter Cities, and therefore are not and cannot be a matter of Statewide
7 concern.

8 10. SB 35 unconstitutionally interferes with the City's Charter authority to enforce
9 local zoning laws and regulations, including the ability to protect the health, safety and welfare of
10 Huntington Beach residents by creating local zoning schemes that correspond to local needs for
11 land use and management as well as elected officials' duty to carry out their respective oaths of
12 office in creating local land use legislation.

13 11. The City seeks a Writ of Mandamus prohibiting the State, Governor and Attorney
14 General from enforcing SB 35 against the City.

15 12. The City is excused from exhausting any available administrative remedies it may
16 have since the State, Governor, and Attorney General have unequivocally determined on multiple
17 occasions that they will not cease enforcing SB 35. Accordingly, exhausting administrative
18 remedies would be a futile act.

19 **IV. SB 35 – THE WEINER ACT**

20 13. SB 35 *restricts Charter Cities such as the City of Huntington from exercising*
21 *local Charter City legislative authority to regulate local land use*. In part, SB 35 requires cities
22 to adopt a streamlined, and ministerial, approval process for housing developments in cities that
23 have not yet made sufficient progress towards their meeting their allocation of the regional
24 housing need assessment (RHNA).

25 14. The California Legislature, when enacting SB 35, claimed (as pretext) that the law
26 was enacted to address a "statewide housing crises." However, the clear effect of the legislation is
27 to *unconstitutionally commandeer cities' discretionary land use authority* over where and how
28 the construction of housing can take place in a city. SB 35 seeks to create a system where the

1 State controls how, where, and when housing is built in every city in California. SB 35 essentially
2 creates unconstitutional authority for the State to “rezone” local land use in a city for its (ill-
3 conceived) political purposes.

4 15. In amending Government Code §65913.4, SB 35, in part, authorizes a development
5 proponent to submit an application for a multifamily housing development, satisfying specified
6 objective standards, and provides that such an application must be processed by the city through a
7 “streamlined, and ministerial, approval process,” and that such proposed developments may not be
8 subject to a conditional use permit. The objective standards (paraphrased) are as follows:

- 9 • City is not meeting its RHNA requirements;
- 10 • The City has not issued building permits commensurate with the
11 number of RHNA units based upon income category;
- 12 • The project is for multifamily with two or more units;
- 13 • The site where the project is proposed is a legal parcel located in the
14 City (with urban areas) and is zoned for general planned residential
15 or residential mixed use, and the project is at least 2/3 designated
16 residential;
- 17 • If units are subsidized, the project proponent must record the land
18 use restrictions;
- 19 • The Project must meet objective zoning and design review
20 standards;
- 21 • The project cannot be located in Coastal Zone, Farm Land,
22 Wetlands, Fire Hazard Zone, Hazardous Waste Zone, Earthquake
23 Fault Zone, Flood Plane, Lands Identified for Conservation Habitat
24 for Protected Species or Conservation Easement;
- 25 • The location cannot be on a site that would require the demolition of
26 affordable housing or rent control property or a Historic Structure;
- 27 • The project cannot disturb housing with existing tenancies of over
28 10 years;

- The proponent must certify they will pay prevailing wages and generally be subject to State law prevailing wage standards and reporting requirements and in some cases use a skilled and trained workforce;
- The project must have more than ten units and not be considered a “public works project;”
- The project cannot require a subdivision of the property or trigger the Subdivision Map Act unless the Project receives low-income tax credit and pays prevailing wages; and
- The project cannot be on a parcel or site governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

16. In addition, the streamlined, ministerial approval process remains in place until the next Housing Reporting Period.

17. SB 35 provides that if a local government approves a project under this scheme, that approval will not expire (if developer does not begin construction) if the project includes investment in affordable housing. SB 35 prohibits a City from adopting any requirement that applies to a project solely or partially on the basis that the project is subject to the streamlined, and ministerial, approval pursuant to these provisions.

18. In addition, SB 35 requires the housing element portion of the annual report to be prepared through the use of standards, forms, and definitions. SB 35 also requires the City to include in its annual report specified information regarding units of net new housing, including rental housing and for-sale housing that have been issued a completed entitlement, building permit, or certificate of occupancy.

19. The California Legislature attempted to justify its overreach into Charter Cities’ Home Rule authority by making a self-serving finding and declaration that the law was enacted as a matter of “statewide concern” to address alleged housing shortages in California. Such finding

1 and declaration are mere pretext for the State's overreach into constitutionally protected Charter
2 City Home Rule authority over its Municipal Affairs. Moreover, whether or not there is a housing
3 shortage, the Legislature's conclusory finding and declaration to that effect cannot constitutionally
4 permit the State to utilize a draconian solution not narrowly tailored to meet the need, and which
5 unconstitutionally impedes Charter Cities' Home Rule authority.

6 **V. SB 35 VIOLATES THE "MUNICIPAL AFFAIRS DOCTRINE"**

7 20. Section 5(a) of Article XI of the California Constitution provides that a Charter
8 City shall not be governed by State law in respect to "Municipal Affairs." Rather, "so far as
9 'Municipal Affairs' are concerned," Charter Cities' laws are "supreme and beyond the reach of
10 [State] legislative enactment." (*California Fed. Savings & Loan Assn. v. City of Los Angeles*
11 (1991) 35 Cal.3d 1, 12.)

12 21. Regulation of local land use and local zoning are vital and core functions of local
13 government, and are therefore "Municipal Affairs" of a Charter City. (*City of Irvine v. Irvine*
14 *Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 874).

15 22. "Municipal Affairs" or the "Municipal Affairs Doctrine"¹ is a California
16 Constitutional recognition of Charter Cities' exclusive authority over its municipal affairs to the
17 exclusion of general State laws. (California Constitution, Art. XI, §5(a).)

18 23. As a Charter City, the City of Huntington Beach has supreme authority over its
19 Municipal Affairs, most importantly, the City's regulation of local land use and zoning within its
20 borders. The California Supreme Court has clearly recognized this general rule:

21 "Land use regulation in California historically has been a function of local government
22 under the grant of police power contained in article XI, §7^[2] of the California
23

24 ¹ The California Constitution provides no definition of "Municipal Affair," aside from those
25 subjects specifically enumerated in section 5(b) of Article XI. However, generations of legislative
26 enactments and judicial interpretations provide that a Charter City is authorized to make and
27 enforce all local laws and regulations, and to be free from State legislation, over local land
28 use/zoning, city property, funds, tax levies and other municipal functions.

² This provision of Article XI applies to all cities and counties, regardless of charter status. In other
words, while all cities derive their fundamental *authority* to regulate local land use under section 7,
section 5(a) recognizes the *exclusivity* of Charter Cities' authority.

1 Constitution. We have recognized that a city's or county's power to control its own land
2 use decisions derives from this inherent police power, not from the delegation of authority
3 by the state..... And the Legislature, when enacting state zoning laws, has declared its
4 intention to provide only a minimum of limitation in order that counties and cities may
5 exercise the maximum degree of control over local zoning matters."

6 (*Big Creek Lumber Co. v. County of Santa Cruz*, (2006) 38 Cal.4th 1139, 1152 (internal citations
7 omitted).)

8 20. Indeed, the California Legislature has expressly recognized and declared that the
9 diversity of the State's communities and their residents requires planning agencies and legislative
10 bodies to implement local planning requirements in ways that accommodate local conditions and
11 circumstances. (California Government Code § 65300.7)

12 21. Moreover, the California Legislature itself "recognizes that the capacity of
13 California cities and counties to respond to State planning laws varies ***due to the legal differences***
14 ***between cities and counties, both charter and general law***, and to differences among them in
15 physical size and characteristics, population size and density, fiscal and administrative capabilities,
16 land use and development issues, and human needs." (California Government Code § 65300.9
17 (emphasis added).)

18 22. The California Legislature has clearly recognized the primacy of local control over
19 land use. The California Legislature has specified certain minimum standards for local zoning
20 regulations, but has carefully expressed its intent to retain the maximum degree of local control.
21 (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.)

22 23. The principal of local autonomy over local zoning and land use is ***guaranteed*** to
23 Charter Cities by Article XI, Section 5(a) of the California Constitution. That provision grants
24 Huntington Beach, as Charter City, exclusive authority devoid of any State control, to "make and
25 enforce all ordinances and regulations in respect to ***Municipal Affairs***," such that with respect to
26 "Municipal Affairs," City authority "shall supersede all [State] laws inconsistent therewith."
27 (Emphasis added.)

28 24. The City of Huntington Beach has exercised this authority to its maximum extent

1 through Charter Section 103, which grants the City “the power to make and enforce all laws and
2 regulations in respect to Municipal Affairs, subject only to such restrictions and limitations as may
3 be provided in this Charter or in the Constitution of the State of California.”

4 25. “The general grant of power to the City under this Charter shall be construed
5 broadly in favor of the City. The specific provisions enumerated in this Charter are intended to be
6 and shall be interpreted as limitations upon the general grant of power and shall be construed
7 narrowly.” (Huntington Beach Charter §§103, 104 Powers of City, Construction.) Pursuant to
8 this authority, as well as concurrent authority provided in State Planning and Zoning Law, the City
9 of Huntington Beach established a Planning Department and created a comprehensive scheme of
10 regulating land use within the City of Huntington Beach. (Huntington Beach Zoning and
11 Subdivision Ordinance (hereinafter “HBZSO”) Title 20-25³.)

12 26. The California Legislature cannot impose *substantive* limitations on the voters of
13 Charter Cities when they adopt charters and ordinances covering areas of regulation constituting
14 “Municipal Affairs”. (*State Building & Construction Trades Council of California v. City of Vista*
15 (2012) 35 Cal.4th 357, 558; *Amador Valley Joint Union High School District v. State Board of*
16 *Equalization* (1978) 22 Cal.3d 208, 219; *Miller v. Sacramento* (1977) 66 Cal.App.3d 863, 867-
17 868.)

18 27. In this case, State Law, the Huntington Beach Charter and HBZSO, as well as
19 decades of case law, provide and/or recognize that local land use and zoning is a Municipal Affair.
20 (*Fletcher v. Porter* (1962) 203 Cal.App.2d 313, 323-325; *City of Walnut Creek v. Silveira* (1957)
21 47 Cal.2d 804; *Pines v. Santa Monica* (1981) 29 Cal.3d 656.)

22 28. However, the primacy of Charter City authority over Municipal Affairs, such as
23 local land use and zoning, over conflicting State laws (like SB 35) requires an additional
24 analytical step where the subject matter at issue is not a category expressly enumerated as a
25 Municipal Affair in section 5(b) of Article XI.

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³ The Huntington Beach Charter and Zoning Code Sections 20 & 25 are attached hereto.

1 29. The California Supreme Court has determined that the inquiry into whether a
2 matter is a Municipal Affair is a question of law. (*State Building & Construction Trades Council*
3 *of California v. City of Vista* (2012) 35 Cal.4th 357, 556-558.) The inquiry involves
4 consideration of a number of factors: whether the subject matter is a Municipal Affair, whether
5 there is a conflict between the State law and the Charter City's charter or ordinance, whether the
6 State law addresses a matter of statewide concern, and whether State law is reasonably related
7 and narrowly tailored to address the asserted statewide concern.

8 30. Along with the express legislative recognition above, that local land use and
9 zoning are Municipal Affairs, the California Court of Appeal has recognized this proposition,
10 "There would not seem to be much question but that regulation of land use, particularly in
11 relation to multi-unit housing which results in population saturation, vehicular congestion and
12 elimination of open space for park and recreation areas, is of vital concern to a municipality."
13 (*Codding Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 378.)

14 31. In recognition of the long-standing constitutional and historical precedent, the
15 California Legislature has heretofore carefully kept itself out of specific local zoning
16 regulations. As to Chapter 4 of Title 7, Division 1 of the Government Code, regarding Zoning
17 Regulations, the California Legislature expressly recognized and declared that the "provisions of
18 this chapter shall not apply to a chartered city, except to the extent that the same may be adopted
19 by charter or ordinance of the city." (California Government Code § 65803.)

20 32. The mere statement by the California Legislature that SB 35 is a matter of
21 "Statewide Concern" thus does not necessarily transmute the law into one that constitutionally
22 applies to Charter Cities. That determination is ultimately for the Courts to make upon
23 consideration of a variety of factors. In this case, the City submits that SB 35 is an
24 unconstitutional overreach by the State into the City's constitutionally protected local land use
25 and zoning powers that have historically and unquestionably remained with Charter Cities.

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33. The City hereby re-alleges and incorporates by reference paragraphs 1-32 of this Petition.

34. Respondents have a clear, present, and ministerial duty to administer the California Constitution and laws of the State of California, including Title 7 of the California Government Code without violating the Charter City provisions of Article XI, §5 of the California Constitution.

35. Respondents' actions by the enactment of SB 35 unconstitutionally ignore, undermine, stamp out, and usurp the City's rights as a Charter City under the Municipal Affairs Doctrine to control the zoning and land use designations within the City to the detriment of the health welfare and safety of the residents of Huntington Beach, as well as Charter City authority to establish and provide for an orderly system of zoning and land use regulations pursuant to California Government Code Title 7 (Government Code §6500 et. seq.) and the California Constitutional grant of power to Charter Cities. (Cal. Const. Article XI, §5.) This right belonging to the City to control the use of land within its jurisdiction has been consistently recognized by the California Supreme Court as a right that is a Municipal Affair. (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.)

36. Unless restrained, Respondents' actions will mandate policies of the State with regard to building housing in direct contravention of the City's zoning code.

37. Respondents have a clear, present, and ministerial duty to administer the California Constitution and laws of the State of California, including SB 35, without interfering with the City's zoning and land use authority.

38. Absent a Writ of Mandamus to compel Respondents to comply with their ministerial duty to follow the California Constitution, and California Government Code Title 7, Petitioner City would be rendered incapable of fulfilling its responsibilities as a Charter City to provide for the health, safety and welfare of its residents.

39. The City is beneficially interested in Respondents' performance of their ministerial duties in compliance with, and respect for the Charter City provisions of the California Constitution, and have no adequate remedy at law to redress the constitutional and statutory violations described above other than issuance of a Writ of Mandamus. The City seeks a Writ of Mandamus to compel Respondents to immediately comply with their mandatory statutory duties and to refrain from violating the statutory provisions set forth herein. Wherefore, the City prays for a Writ of Mandamus as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays for judgment as follows:

1. On the City's First Cause of Action, for issuance of an alternative and peremptory Writ of Mandamus that commands and compels Respondents to comply with the California Constitution and their respective mandatory and ministerial duties with respect to the City's Charter preemption claims raised in this action, including without limitation that Respondents not enforce SB 35 against the City and comply with Article XI, § 5 of the California Constitution; and

2. For such other and further relief as the Court deems just and proper.

DATED: January 17, 2019

MICHAEL E. GATES, City Attorney

By:

MICHAEL E. GATES, City Attorney
Attorney for Petitioner
CITY OF HUNTINGTON BEACH